Supreme Court, U.S.
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No. 98-1878

IN THE

# Supreme Court of the United States

JOHN J. GARRICK and MARYANN GARRICK,

*Petitioners,*

*v.*

DALE THIBODEAUX, ACADIA PARISH SHERIFF'S DEPARTMENT, JOHN WILSON, TOWN OF CHURCH POINT, KEN GOSS, SHERIFF OF ACADIA PARISH, LA, FLOYD LYONS, CHIEF OF POLICE FOR THE TOWN OF CHURCH POINT, LA,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

## RESPONDENTS' BRIEF IN OPPOSITION

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## QUESTIONS PRESENTED

I.

Whether Petitioners' claims for excessive force under 42 U.S.C. § 1983 are preempted under the authority of *Heck v. Humphrey*, 512 U.S. 477, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994)?

II.

Has the Petitioners' conviction been ". . . reversed on direct appeal, expungement by executive officer, declared invalid by state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus?"

III.

Under Louisiana law, is a plea of *nolo contendere* or "no contest" equivalent to an admission of guilt?

IV.

Is the purpose of Rule 410 of the Federal Rules of Evidence to shield a defendant who enters a plea of "no contest" or *nolo contendere* in a criminal proceeding, and then who subsequently institutes a civil proceeding based upon the same facts which were the basis for the plea of "no contest" or *nolo contendere*?

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## REASONS FOR DENYING THE WRIT

John Garrick was charged with disturbing the peace, resisting arrest, and battery on a police officer. These events occurred on August 14, 1995. John Garrick pled "no contest" to these charges on September 25, 1995, and was thus convicted on all charges.

John Garrick was arrested on August 14, 1995, in Church Point, Louisiana, after officers received a dispatch to a disturbance at a lounge. When the officers arrived at the scene of the disturbance, John Garrick, the Petitioner, was engaged in loud and abusive language outside the lounge in close proximity to several residences.

After being ordered by the officers to cease his activities, which were causing a disturbance of the peace, John Garrick refused and continued to use loud and abusive language, vehemently insisting that no one was going to arrest him or take him to jail. During the course of executing the arrest, John Garrick attempted to pull away from the officers and began to struggle with the arresting officer. Another officer, Sergeant Dale Thibodeaux of the Acadia Parish Sheriff's Department, who had also arrived at the scene, attempted to subdue John Garrick. This resulted in John Garrick being handcuffed and taken into custody. While placing Garrick into the suburban vehicle, which was used as a patrol unit, John Garrick kicked Sergeant Thibodeaux in the chest with his cowboy boots. John Garrick continued to curse Sergeant Thibodeaux and the other officers, and required further restraint, because the suburban vehicle did not have a screen or grid to shield the officers from a person in the rear of the vehicle.

When John Garrick arrived at the Church Point Police Department, the handcuffs were removed, for booking and processing. After the handcuffs were removed, John Garrick again attacked Sergeant Thibodeaux, causing him to be handcuffed again. After pleading "no contest" to disturbing the peace, resisting arrest, and battery on a police officer, John Garrick brought this action under 42 U.S.C. § 1983, claiming that the officers had used excessive force in completing his arrest.

## I.

## THE FIFTH CIRCUIT AND TRIAL COURT MADE THEIR FINDINGS BASED ON JOHN GARRICK'S SPECIFIC CIRCUMSTANCES AND ON HIS OWN UNDISPUTED EVIDENCE

The United States District Court granted a summary judgment filed on behalf of all defendants. The United States District Court dismissed the plaintiffs' claims under 42 U.S.C. § 1983, holding that these claims are barred by the United States Supreme Court Ruling in *Heck v. Humphrey*, 512 U.S. 477, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994).

The United States District Court also relied upon the authority in *Hudson v. Hughes*, 98 F.3d 868 (5th Cir. 1996), involving a plaintiff in a claim under 42 U.S.C. § 1983, for excessive force when the plaintiff was convicted of battery on an officer. The United States District Court did not reach the applicant's argument on Federal Rules of Evidence 410(2). Although the United States District Court did not base its ruling on the application of Federal Rules of Evidence 410(2), the issue was extensively briefed by the

applicant in the United States Court of Appeal and in the application now before the Court.

The United States Court of Appeal for the Fifth Circuit issued a *per curiam*, not for publication, holding the following:

> The district court held that under the doctrine of *Heck v. Humphrey* . . . Garrick was precluded from raising his Section 1983 claims. Under *Heck*, a Section 1983 plaintiff cannot recover damages for an unconstitutional conviction or for "harm caused by actions whose unlawfulness would render a conviction or sentence invalid," until he has shown that the conviction or sentence has been "reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issurance of a writ of habeas corpus . . ." Otherwise, such a claim for damages is not cognizable under Section 1983 and must be dismissed . . .
>
> John Garrick had been convicted on his plea of *nolo contendere* of remaining after being forbidden, disturbing the peace, resisting arrest, and battery on a police officer. No evidence or allegation of a reversal or dismissal of the convictions is in the record . . . Therefore, even after all inferences most favorable to the plaintiffs are considered, the defendants have carried their burden of showing that Garrick's claims are barred under *Heck*, and the Garricks

have failed to produce evidence raising a genuine issue of material fact. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 321 (1986). The summary judgment granted by the district court is therefore AFFIRMED.

## II.

## THE FIFTH CIRCUIT AND THE TRIAL COURT WERE CORRECT IN CONCLUDING THAT JOHN GARRICK'S PLEA OF "NO CONTEST" WAS EQUIVALENT TO A PLEA OF GUILTY BARRING HIS CLAIMS UNDER *HECK v. HUMPHREY*

### A. A Plea Of "No Contest" Is Equivalent To An Admission Of Guilt Under Louisiana Law

The United States District Court dismissed the claims by John J. Garrick under 42 U.S.C. § 1983, by the proper application of the principles stated by the United States Supreme Court in *Heck v. Humphrey, supra*.

In *Heck v. Humphrey, supra*, Justice Scalia outlined the judicial policy which effectively precludes claims under 42 U.S.C. § 1983, when the civil rights plaintiff has been convicted of a crime or misdemeanor, based upon the same set of facts which the civil rights plaintiff claims is the basis for the § 1983 action.

This was not a new legal theory. The United States District Courts had followed this judicial policy prior to *Heck v. Humphrey, supra*. Generally, a party cannot claim a violation for civil rights when an arrest results in a plea of guilty or a conviction for a crime or misdemeanor.

A civil rights action based on false arrest or false imprisonment is barred by plaintiff's conviction for the offense for which he has been arrested. *Giannini v. City of New York*, 700 F. Supp. 202 (S.D.N.Y. 1988).

John Garrick pled no contest, and was thus convicted and sentenced in the criminal matter to disturbing the peace, resisting arrest, and battery on a police officer.

The United States District Court dismissed Garrick's action because "plaintiff's conviction has not been reversed on direct appeal, expungement by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus," citing *Heck, supra*, and *Hudson v. Hughes*, 98 F.3d 868 (5th Cir. 1996).

The District Court did not, and need not, reach Garrick's argument regarding Federal Rule of Evidence 410(2). Under Louisiana law, a sentence based on a *nolo contendere* or *no contest plea* is a conviction under Louisiana Code of Criminal Procedure Article 552(4). (*See* Appendix No. 1). The final result unfavorable to Garrick in the criminal matter, *i.e.*, the conviction, is all that is necessary, under the facts of this case, to bar Garrick's claim for damages. The fact that the conviction is based upon a *no contest* plea is of no significance.

Louisiana jurisprudence establishes that a plea of *nolo contendere* or "no contest" is equivalent to an admission of guilt. In *State v. Cook*, 664 So. 2d 489 (La. App. 3rd Cir. 1995), *writ granted*, 668 So. 2d 363, *reversed*, 674 So. 2d

957, on other grounds (La. 1996), *cert. denied*, 117 S. Ct. 615, the Court stated:

> Plea of nolo contendere or "no contest" is equivalent to admission of guilt and, with the exception of being unavailable as admission in civil trial, is treated as guilty plea.

**B. Rule 410 Of The Federal Rules Of Evidence Provides That A Plea Of *Nolo Contendere* Is Not Admissible In A Civil Action Instituted Against The Defendant Who Made The Plea**

The United States District Court granted a summary judgment filed on behalf of all defendants. The United States District Court dismissed the plaintiffs' claims under 42 U.S.C. § 1983, holding that these claims are barred by the United States Supreme Court Ruling in *Heck v. Humphrey, supra.*

The United States District Court did not reach the appellant's argument on Federal Rules of Evidence 410(2). Although neither the United States District Court nor the Court of Appeal based their ruling on the application of Federal Rules of Evidence 410(2), the issue is extensively argued by the applicant. The appellees appropriately replied to the applicant's argument under Rule 410(2).

Rule 410 of the Federal Rules of Evidence provides that a plea of *nolo contendere* is not admissible "in any civil or criminal proceeding, . . . against the *defendant* who made the plea or was a participant in the plea discussions." (Emphasis Supplied).

The purpose of this rule is to shield a defendant who enters a plea of "no contest" or *nolo contendere* in a criminal proceeding in any subsequent civil or criminal proceeding where the party who made the plea of "no contest" or *nolo contendere* is also a *defendant*.

The purpose of this rule is to not allow a party who subsequently becomes a plaintiff in a civil proceeding to use Rule 410 as a weapon against a defendant in a civil proceeding. Rule 410 is intended to be a shield, and not a sword. If a party commits an offense of resisting arrest or battery on a police officer, and then is allowed to assert the same operative facts to support the cause of action, Rule 410 would have absurd results.

In *Pete v. Metcalf*, 8 F.3d 214 (5th Cir. 1993), the Fifth Circuit stated:

> Pete fails to state a claim for malicious prosecution because his prosecution ended with a plea of nolo contendere and resulting conviction and thus the action did not terminate in his favor. This bars any action for malicious prosecution.

*Pete, supra.*

## III.

## THE FIFTH CIRCUIT IS NOT IN CONFLICT WITH THE SECOND CIRCUIT. THE DECISION OF THE SECOND CIRCUIT IN *THOMAS v. ROACH* IS BASED UPON FEDERAL RULES OF EVIDENCE 410

The Second Circuit Opinion in *Thomas v. Roach*, 165 F.3d 137 (2nd Cir. 1999), narrowly held the following:

> Thus, while a Section 1983 action for arrest without probable cause may be barred by the arrestee's conviction at trial or by the arrestee's guilty plea, *see Cameron v. Fogarty*, 806 F.2d 380, 388-89 (2d Cir. 1986); *Roundtree v. City of New York*, 778 F.Supp. 614, 619 (E.D. N.Y. 1991), Thomas's Section 1983 claim predicated on excessive force during his arrest is not barred by his *nolo contendere* plea to the offense for which he was arrested.

The Fifth Circuit did not reach the issue regarding the application of Rule of Evidence 410. If the Fifth Circuit had reached this issue, the result would be the same. In *Thomas v. Roach*, the Second Circuit was considering a plea of *nolo contendere* which did not bar a § 1983 action because the plea did not amount to a conviction, or a plea of guilty. If the plea had amounted to a conviction, or a plea of guilty, under Connecticut law, the decision by the Second Circuit would be different because the Second Circuit observed that a § 1983 action, would have been barred by the arrestee's conviction at trial, or by the *arrestee's guilty plea*. Under Louisiana law, a plea of "no contest" or *nolo contendere* is equivalent to an admission of guilt. *See State v. Cook, supra*.

The Fifth Circuit and the District Court are correct under *Heck v. Humphrey*. In *Heck v. Humphrey, supra*, Justice Scalia outlined the judicial policy which effectively precludes claims under 42 U.S.C. § 1983, when the civil rights plaintiff has been convicted of a crime or misdemeanor based upon the same set of facts which the civil rights plaintiff claims is the basis for the § 1983 action.

The United States District Court and the Fifth Circuit dismissed Garrick's action because the "plaintiff's conviction has not been reversed on direct appeal, expungement by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus," citing *Heck, supra*, and *Hudson v. Hughes*, 98 F.3d 868 (5th Cir. 1996).

## CONCLUSION

The Fifth Circuit and the Second Circuit are not in conflict. The Fifth Circuit correctly applied the principles established in *Heck v. Humphrey, supra*. The Second Circuit based its findings on the conclusion that a *nolo contendere* plea under Connecticut law was not equivalent to a plea of guilty. A "no contest" plea is equivalent to a plea of guilty under Louisiana law.

Respectfully submitted,

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